

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 RAFAEL GERMAN, ) Case No. CV 18-9917-MWF (JPR)  
12 )  
13 ) Petitioner, )  
14 ) ORDER DISMISSING PETITION  
15 ) v. ) WITHOUT PREJUDICE UNDER FEDERAL  
16 ) RULE OF CIVIL PROCEDURE 41(a)(2)  
17 )  
18 ) JOSIE GASTELO, Warden, )  
19 )  
20 ) Respondent. )  
21 \_\_\_\_\_ )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

17 On February 25, 2019, Petitioner moved to voluntarily  
18 dismiss his federal habeas Petition, which he had filed on  
19 November 27, 2018, and as to which Respondent had filed an Answer  
20 on January 28. Petitioner gave no reason for the request. The  
21 Court ordered Respondent to file a response and allowed  
22 Petitioner to file a reply no later than 14 days after service of  
23 the response. The Court warned Petitioner that if it granted his  
24 request, even "without prejudice," any subsequent petition might  
25 be untimely or otherwise procedurally barred, meaning that "none  
26 of his claims would ever be heard on federal habeas review."  
27 Respondent filed nonopposition to Petitioner's dismissal request  
28 on March 1, but Petitioner has not filed a reply.

1 "A district court should grant a motion for voluntary  
2 dismissal under Rule 41(a)(2) unless a defendant can show that it  
3 will suffer some plain legal prejudice as a result." Smith v.  
4 Lenches, 263 F.3d 972, 975 (9th Cir. 2001). Ordinarily, such  
5 dismissal should be without prejudice. Fed. R. Civ. P. 41(a)(2).  
6 In light of Respondent's lack of opposition and Petitioner's  
7 failure to file a reply even after the Court warned him of the  
8 possible consequences of dismissal, the Court GRANTS Petitioner's  
9 motion and dismisses this action without prejudice. See Tatum v.  
10 Yates, 549 U.S. 1268 (2007) (denying certiorari in Tatum v.  
11 Lewis, 184 F. App'x 646, 647-48 (9th Cir. 2006) ("Even if the  
12 district court was required to take into account the  
13 [petitioner]'s equities in ruling on [his] Rule 41(a)(2) motion,  
14 it did so by correctly advising [him] of the potential  
15 consequences of the dismissal of his petition.")). Let Judgment  
16 be entered accordingly.

17  
18 DATED: August 28, 2019

  
MICHAEL W. FITZGERALD  
U.S. DISTRICT JUDGE

19  
20  
21 Presented by:

22   
23 Jean P. Rosenbluth  
U.S. Magistrate Judge  
24  
25  
26  
27  
28